IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4398 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARATT STATE ROAD TRANSPORT CORPORATION

Versus

LILAJI ATAJI THAKORE

Appearance:

1. Special Civil Application No. 4398 of 2001

MR ASHISH M DAGLI for Petitioner No. 1

MR CB DASTOOR for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 17/04/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Dagli for the petitioner and Mr. Dastoor for the respondent workman. IN this petition, the petitioner corporation has challenged the award made by the labour court, Ahmedabad

in Reference NO.1526 of 1994 dated 20th October, 2000 wherein the reference of the second party workman has been partly allowed and the petitioner has been ordered to reinstate the respondent workman on his original post with continuity of service and 10 days' wages per month towards back wages for the intervening period and has further ordered the petitioner to implement the award and in case if the petitioner will fail the implement the award in question, then, the respondent will be required to be paid the amount of back wages with 18 % interest from 1.11.2000.

By order dated 28th September, 2001 passed by this Court, this petition was admitted by issuing rule thereon and the petitioner was directed to reinstate the respondent workman on or before 15th October, 2001 and interim relief qua back wages has been granted by this court.

Learned advocate Mr. Dagli appearing for the petitioner has submitted that the respondent was working as off day reliever watchman and was not a permanent employee of the corporation; he was not selected by the corporation on the post of watchman but was working subject to availability of work of watchman as and when the permanent/regular watchman is on leave. Therefore, there was no continuous service from the date of appointment till the date of termination; that the workman has not completed 240 days' continuous work and, therefore, provisions of section 25-F were not applicable. He has submitted that however, the labour court has committed error in granting reinstatement and has also committed error in granting back wages for 10 days salary per month during the intervening period.

On the other hand, learned advocate Mr. Dastoor has submitted that before the labour court, the petitioner corporation has not produced any evidence against the respondent and the corporation has led no oral evidence before the labour court; that the labour court was right in appreciating the oral evidence vide Exh. 12 and in absence of the evidence of the petitioner Corporation, the labour court was right in setting aside the termination order and granting reinstatement with 10 days back wages each month during the intervening period since the respondent was working as off day reliever watchman since 1979 and has completed 240 days continuous service as per his oral evidence which was not controverted and rebutted by the corporation by producing any documentary or oral evidence before the labour court. According to his submission, the corporation was in

custody of such evidence but has not produced the same before the labour court and, therefore, the labour court has taken the right view and, therefore, this court should not interfere with such legal and valid award in exercise of the powers under Article 226 and/or 227 of the Constitution of India.

I have considered the arguments of the learned advocates for the parties. I have also perused the award in question made by the labour court. Before the labour court, statement of claim was filed by the respondent and reply thereto was filed by the petitioner vide Exh. 11 and, thereafter, the respondent was examined at Exh.12 and no oral evidence was led by the corporation and no documentary evidence has been produced by the corporation before the labour court and thereafter the labour court has relied upon the oral evidence adduced by the respondent and has come to the conclusion that the respondent workman was working with the petitioner corporation as off day reliever watchman since 1979 and remained in service continuously upto 14th December, 1993 and meanwhile has completed 240 days' continuous service and the corporation has not produced any pay register or muster roll before it to controvert the contentions of the respondent workman and, therefore, the labour court has considered that the respondent was working on the vacant post where one permanent watchman proceeds on leave and his service has been terminated by the respondent without any justification and without affording any opportunity to him and, therefore, the labour court has come to the conclusion that the respondent has continuously worked with the corporation for 240 days and, therefore, there was breach of section 25F of the Industrial Disputes Act, 1947.

Upon perusal of the award in question, according to my opinion, in issuing directions to reinstate the respondent in service with continuity of service, the labour court has not committed any error or irregularity which would require interference of this court in exercise of the powers under Article 226 and/or 227 of the Constitution of India. Therefore, these directions are not required to be disturbed. Pursuant to order dated 28.9.2001 passed by this court, the petitioner was directed to reinstate the respondent in service on or before 15th October, 2001 and learned advocate Mr. Dastoor has submitted that the respondent workman has already been reinstated in service.

While issuing directions to reinstate the respondent workman, the labour court has issued further

direction to pay 10 days wages per month during the intervening period as back wages on the oral evidence led by the respondent workman. Such directions were issued by the labour court on the basis of the presumption that the respondent must have been getting work of 10 days each month but there was no evidence to the effect that the respondent was getting such work; there was no evidence as to how many days he was being employed each month and, therefore, considering this fact as well as the pendency of the reference before the labour court, and also considering the fact that the respondent was working as off day reliever watchman and was not a regular employee of the corporation but was being engaged subject to availability of work, according to my opinion, directions issued by the labour court to pay 10 days' wages each month during the intervening period towards back wages are required to be quashed and set aside while confirming the award of reinstatement with continuity of service.

For the reasons recorded hereinabove, this petition is partly allowed.

The award made by the labour court, Ahmedabad in Reference NO.1526 of 1994 dated 20th October, 2000 is quashed and set aside in so far as it relates to payment 10 days' wages per month towards back wages for the intervening period. It is, however, clarified that this court has not disturbed the directions issued by the labour court as regards reinstatement of the respondent workman on his his original post with continuity of service. Rule is made absolute in terms indicated hereinabove with no order as to costs.

17.4.2002. (H.K. Rathod,J.)

Vyas